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STATE FOR EB/MTA/MST
STATE PASS TO USTR FOR G. BLUE

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TAGS: EFIN ETRD EINV
SUBJECT: DOMINICAN REPUBLIC 2004 NATIONAL TRADE ESTIMATE REPORT

REF: STATE 310954

¶1. The following updates the National Trade Estimate Report for the Dominican Republic as requested by Reftel for 2004.

TRADE SUMMARY

For January through September of 2003, the United States had a trade deficit with the Dominican Republic of $112 million, a deterioration of $263 million from the $151 million surplus for the same period of 2002. U.S. goods exports to the Dominican Republic were $3.2 billion, a decrease of $39 million from the same period last year. Corresponding U.S. imports from the Dominican Republic were $3.3 billion, an increase of $224 million. The shift in the trade balance is primarily the result of the depreciation of the peso, which lost half of its value against the dollar in 2003. The Dominican Republic is currently the fifth largest export market for U.S. goods in the Western Hemisphere.

The United States has announced its intent to launch negotiations with the Dominican Republic in January 2004. The objective of those negotiations is to integrate the Dominican Republic into the Central American Free Trade Agreement (CAFTA) that is expected to conclude by the end of ¶2003.

According to the Dominican Central Bank statistics, the stock of U.S. foreign direct investment (FDI) in the Dominican Republic in 2002 amounted to $1.5 billion, an increase of $748 million over U.S. FDI in 2001, $752 million. For January through September of 2003, Dominican Central Bank figures show U.S. FDI increased at $245 million. U.S. FDI in the Dominican Republic is concentrated largely in the manufacturing, energy, and banking sectors.

Much of the U.S. investment in the manufacturing sector is located in export processing zones, called Free Trade Zones (FTZ), where apparel, footwear, electronic products and medical goods are assembled from U.S. components and materials and then exported back to the United States.

IMPORT POLICIES

Tariffs

As a result of a progressive deterioration in the Dominican economy during the second half of 2003, the Dominican government has requested assistance from the International Monetary Fund (IMF). As part of the initial agreement reached with the IMF, the Dominican Government ordered the application of a two-percent surcharge on the CIF value of all imports. Decree 646-03 establishes that goods that have been exempt from taxes and surcharge under free trade agreements will not pay the new surcharge. The decree does not mention if FTZ items are exempt, although previous statements from the government indicate the surcharge would affect free zone imports. (The government is also seeking to implement a 5 percent export tax as part of a revised IMF agreement under negotiation.

Non-tariff Measures

The government of the Dominican Republic imposes a selective consumption tax ranging from 15 percent to 60 percent on &nonessential8 products such as home appliances, alcohol, perfumes, jewelry, automobiles and auto parts. The United States has raised concerns about the possible discriminatory effect of the application of this tax on distilled spirits, because the tax on cane-based spirits (nearly all of which is domestically produced) is 35 percent, while the tax assessed on non-cane based spirits (much of which is imported) is 45 percent. Additionally, U.S. companies have complained that the Dominican Republic applies a differential &adjustment factor,8 depending on the category of spirit, upon which the ad valorem consumption tax is levied.

Bringing goods through Dominican Customs can often be a slow and arduous process. Customs Department interpretations often provoke complaints by businesspersons, and arbitrary clearance procedures sometimes delay the importation of merchandise for lengthy periods. Furthermore, the Dominican

government continues to require importers to obtain from a Dominican Consulate in the United States a consular invoice and &legalization8 of documents, with attendant fees and delays. The use of &negotiated fee8 practices to gain faster customs clearance continues to put some U.S. firms at a competitive disadvantage in the Dominican market.
In anticipation of the signing of a second IMF stand-by agreement, and in an effort to raise badly needed revenue, the Dominican government increased the exchange surcharge (Recargo Cambiario) from 4.75 percent to 10 percent. Dominican Customs collects the Cambiario, which is a tax imposed on the invoice dollar amounts of all imports into the Dominican Republic. The Cambiario was initially supposed to be gradually phased down according to the Monetary and Financial Law No. 183-02 (Nov. 21, 2002). On October 23, 2003, the Central Bank issued a resolution increasing the Cambiario to 10 percent and delaying the phase out until February 2004 or when macroeconomic conditions were stable. This resolution was implemented on November 3, 2003.

The Dominican government implemented the WTO Agreement on Customs Valuation in July 2001 following a 16-month extension granted by the WTO Committee on Customs Valuation. It has notified its implementing legislation to the WTO. In October 2001, the Dominican Republic was granted a waiver that permits continued use of reference prices on over two-dozen categories of goods that expired on July 1, 2003. A new waiver has not been granted.

Sanitary permits are required for the importation of many agricultural products. In practice, these sanitary permits are used as import licenses to control import levels of selected commodities and products. The inability to apply for and receive sanitary permits in a timely manner in the Dominican Republic for shipments of U.S. meat and dairy products continues to be a serious problem for U.S. export companies and Dominican importers. This is a result of a continuing policy by the General Directorate of Livestock within the Ministry of Agriculture to delay or reject applications for sanitary permits, based on its assessment of market needs and the effect imports would have on domestic producers.

The trade-restrictive actions of the Livestock Directorate fall into two main areas: absorption requirements and lack of transparency.

Absorption Requirements

Absorption requirements, which require an importer to purchase specified quantities of domestic products in order to import those same types of products, were to be eliminated. However, U.S. companies indicate that the Livestock Directorate is requiring importers to purchase 25 percent of their requirements for turkeys from domestic sources, in order to receive sanitary permits.

Transparency

The current process for granting sanitary permits is arbitrary, with applications for permits being rejected or subject to lengthy delays, with little or no explanation and no apparent basis in Dominican law. This is especially a problem for products with a short shelf life, such as yogurt, which could quickly pass its expiration date if delayed in port. Some U.S. companies have reported that they are no longer attempting to export to the Dominican Republic because of financial losses and frustration from previous attempts to obtain import permits.

U.S. companies have also expressed concern that the Dominican Dealer Protection Law 173, which applies only to foreign and not domestic suppliers, makes it extremely difficult to terminate contracts with local agents or distributors without paying exorbitant indemnities. Several U.S. companies have lost lawsuits brought under this law and have suffered significant financial penalties. This law has had a negative impact on market access and on consumer welfare in the Dominican Republic.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The Dominican Republic generally accepts U.S. certifications and standards. U.S. agricultural exports are sometimes subject to sanitary and phytosanitary measures that appear to be arbitrarily enforced and not based on science.

GOVERNMENT PROCUREMENT

There is no explicit &buy national8 policy; however, government procurement is often conducted without benefit of open bidding. The processes by which contractors and/or suppliers are chosen are often opaque. The Dominican Republic is still not a signatory of the WTO Agreement on Government Procurement. The United States lifted its suspension of a waiver under the &Buy America Act8 in 2003

after the Dominican government increased its cooperation in the World Trade Organization Working Party on Transparency in Government Procurement, which was based partly on legislation presented to the Dominican Congress to make government procurement more transparent. The law has not yet been approved.

EXPORT SUBSIDIES

The Dominican Republic does not have aggressive export-promotion schemes other than the exemptions given to firms in the free trade zones. A tax rebate scheme designed to encourage exports has been considered a failure.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The Dominican government took steps to strengthen its intellectual property rights regime during 2003, and as a result, the United States improved the country,s standing under Special 301 from &priority watchlist8 to &watchlist.8 Although the Dominican Republic has strong legislation to protect copyrights and has improved the regulatory framework for patent and trademark protection, United States industry representatives continue to cite lack of IPR enforcement as a major concern. The government has taken some steps to prosecute violators, however, there is insufficient training or resources for enforcement, and the judicial process moves very slowly. The Dominican Republic recently ratified the WIPO Copyright Treaty and has submitted the WIPO Performances and Phonograms Treaty to Congress for ratification.

Patents and Trademarks

The government passed regulatory measures in 2003 that appear to significantly strengthen the Industrial Property Law passed in 2000 and bring the law into compliance with Trade Related Aspects of Intellectual Property (TRIPS) under the WTO. However, the new regulations have not yet been applied in legal proceedings, so the effectiveness of those measures has not been tested.

Copyrights

Despite a new, TRIPS-compliant copyright law passed in 2000 and some improvement in enforcement activity, piracy of copyrighted materials is still widespread. Video and audio recordings and software are being copied without authorization despite the government,s efforts to seize and destroy such pirated goods. The United States Government continues to receive serious reports of television and cable operators rebroadcasting signals without compensating either the original broadcaster or the originator of the recording. U.S. industry representatives point to extended delays in the judicial process when cases are submitted for prosecution.

SERVICES BARRIERS

In October 2002, the Dominican Republic passed a new monetary and financial law that provides for national treatment of investors in most of the financial services sector. The law establishes a regulatory regime for monetary and financial institutions, and provides for participation of foreign investment in financial intermediary activities in the Dominican Republic.

It is not clear at this time what long-term effects the Banco Intercontinental (Baninter) bank fraud scandal will have on financial services sector investment. The fraud resulted in an estimated $2.2 billion loss, equivalent to roughly 12-15 percent of GDP. The Dominican government chose to guarantee all deposits, even though the banking law sets a relatively low ceiling for government guarantees of bank deposits. Since the Baninter scandal, the government has intervened in two other Dominican banks that became insolvent, BanCredito and Banco Mercantil. The Dominican Republic,s Leon Jimenez Group subsequently purchased BanCredito, and Republic Bank, based in Trinidad & Tobago, acquired Banco Mercantil.

Although the Dominican Republic has not yet ratified the 1997 WTO Financial Services Agreement the new monetary and financial law appears to go beyond the commitments of the WTO agreement. The Dominican Republic has committed itself to allow foreign banks to establish branches or local companies with up to 100 percent foreign equity to supply deposit-taking, lending, and credit card services. Foreign investors could also own up to 100 percent equity in local suppliers of leasing and insurance service suppliers. There is no longer any need for local participation.

The Dominican Insurance Law remains unchanged requiring that Dominican shareholders hold at least 51 percent of the shares of national insurance companies.

INVESTMENT BARRIERS

Dominican legislation does not contain effective procedures for settling disputes arising from Dominican Government actions. Dominican expropriation standards are not consistent with international law standards; several investors have outstanding disputes related to expropriated property. Subsequent to U.S.-Dominican Trade and Investment Council meetings in October 2002, the Government set out to examine outstanding expropriation cases for possible resolution through payment or issuance of government bonds under a 1999 law. With the help of a USAID contractor, the Boston Institute for Developing Economies (BIDE), the Dominican government has been able to identify analyze 245 cases and has sent to and received approval for 188 (76.7%) by the Debt Commission. The remaining cases will be sent to the next Debt Commission meeting, which has yet to be set.

The Dominican Republic implemented the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) in August of 2002, which provides courts a mechanism to enforce international arbitral awards.

In 1999, capitalization of the state electric company left control of the distribution system and most generating capacity in private hands. In 2002, the Dominican government reached agreement to renegotiate most of the contracts with independent power producers (IPP) and established a new agreement with the distributors on collection and payment mechanisms, as well as rate structure. In 2003, however, the electricity sector in the Dominican Republic began to deteriorate. The crisis in the sector is primarily due to distributor,s inability to collect sufficient funds from consumers and the Dominican Government, and the pricing formula that distributors must use to convert dollar-indexed tariffs into peso charges to their customers, which has been exacerbated by the devaluation of the peso. The total amount owed in payment arrears to the generators and distributors exceeds USD 350 million, and continues to grow. In September, the government surprised many observers by re-purchasing Spanish firm Union Fenosa,s share of two distributors (EDENORTE and EDESUR). The buyout resulted in a suspension of the IMF stand-by agreement that had been agreed in August. Electrical sector problems threaten the economic competitiveness and have the potential to spark further social unrest in the Dominican Republic.

LACK OF GOVERNMENT ACTION AGAINST ANTI-COMPETITIVE PRACTICES

The Dominican Republic does not have a well-developed legal framework against anti-competitive practices. There have been no reported incidents in which a U.S. firm has initiated legal action against a state-owned or private company for practices that restricted the sale of U.S. products or services.

TRADE RESTRICTIONS AFFECTING ELECTRONIC COMMERCE

Embassy is not aware of specific legislation or taxes that apply to electronic commerce. However, shipping costs, difficulties with the postal system and customs, and import duties are practical constraints to e-commerce.

OTHER BARRIERS

U.S. companies continue to complain about lack of transparency and corruption in all sectors. Lack of predictability in the judicial process also presents problems for U.S. companies seeking to resolve contract disputes. The Dominican Republic also has a dealer protection law that imposes financial penalties on foreign companies that terminate agreements with local distributors.

HERTELL